

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
Tampa Division
www.flmb.uscourts.gov

IN RE: Chapter 11

TIME DEFINITE SERVICES, INC., Case No.: 8:19-bk-

Debtor. /

**MOTION FOR COMFORT ORDER AUTHORIZING DEBTOR TO
CONTINUE PRE-PETITION LITIGATION AGAINST NAVISTAR, INC.**

COMES NOW, TIME DEFINITE SERVICES, INC. (the “Debtor”), by and through its undersigned counsel, and files this, its *Motion for Comfort Order Authorizing Debtor to Continue Pre-Petition Litigation Against Navistar, Inc.* (the “Motion”). In support of the Motion, the Debtor respectfully states as follows:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are 11 U.S.C. § 105(a) and Rule 6009 of the Federal Rules of Bankruptcy Procedure.

Background

4. On July 12, 2019 (the “Petition Date”), the Debtor filed a *Voluntary Petition [Docket #1]* for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Florida.

5. The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of title 11 of the Bankruptcy Code.

6. A creditors' committee has not been appointed in this case. No trustee or examiner has been appointed.

7. The Debtor is long haul trucking company which runs more than one hundred trucks throughout the United States. The Debtor also generates substantial income from freight forwarding and freight brokerage services.

The Navistar Litigation

8. Commencing on or about August 15, 2007, the Debtor began acquiring trucks manufactured by Navistar, Inc., f/k/a International Truck and Engine Corporation ("Navistar"). Ultimately, the Debtor acquired large volume of Navistar trucks over the next few years.

9. Unfortunately, the various Navistar trucks constantly brokedown and suffered from a plethora of manufacturing defects.

10. As a result in 2014, the Debtor commenced litigation against Navistar. in the Circuit Court of the 18th Judicial Circuit, Dupage County, Illinois (Case No.: 14-MR-1475) (the "Navistar Litigation") which is still pending as of the filing of the instant motion.

11. Recently, the Circuit Court found Navistar liable to the Debtor and has proceeded to the damage phase of the Navistar Litigation. The Debtor estimates its damages to be at least \$8,800,000.00.¹

Relief Requested

12. By this motion, the Debtor seeks entry of a comfort order authorizing it to proceed with the Navistar Litigation.

Basis for Relief

¹The Debtor scheduled its claim against Navistar on Schedule A/B to its *Voluntary Petition*.

13. Rule 6009 of the Federal Rules of Bankruptcy Procedure reads as follows, "[w]ith or without court approval, the trustee or debtor in possession may . . . commence and prosecute any action or proceeding on behalf of the estate before any tribunal."

14. The Debtor recognizes that under Rule 6009, the Debtor does not need Court authority to proceed with the Navistar Litigation.

15. However, the Debtor, in an abundance of caution, seeks approval to ensure that there is no confusion or delay in the Navistar Litigation.

16. Hence, the Debtor requests a comfort order authorizing it to proceed with the Navistar Litigation.

WHEREFORE, TIME DEFINITE SERVICES, INC., the Debtor, respectfully requests that this Honorable Court enter an order: (i) granting the motion; (ii) authorizing the Debtor to proceed with the Navistar Litigation; and (iii) granting such other and further relief as the Court shall deem just and proper.

RESPECTFULLY SUBMITTED, on this 12th day of July, 2019.

BUDDY D. FORD, P.A.,

/s/ Buddy D. Ford
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of July 2019, a true and correct copy of the foregoing was sent by CM/ECF Electronic Mail to:

United States Trustee - TPA, USTPRegion21.TP. ECF@USDOJ.GOV

and, by U.S. Mail to:

Time Definite Services, Inc., 794 Lake Brim Dr., Winter Garden, FL 34787

Twenty (20) Largest Unsecured Creditors

/s/ Buddy D. Ford
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